

June 24, 2010

**** Senate Counter to House Counter-Counteroffer ****

Title: Title X

Matter: Bureau of Consumer Financial Protection

The Senate accepts the following House Counter-Counteroffer, dated June 24, 2010, proposals with some modification:

- 3. Amend Senate provision** setting the standard the Comptroller of the Currency or a court must use in preempting state consumer laws (Senate Bill § 1044, page 1496, lines 14-24).
- 4. Amend Senate provision** requiring disclosures and regulation of remittance transfers (Senate Bill § 1074, page 1610, line 1), with modification.
- 5. Amend Senate provision** relating to special purpose telephone cards (page 1379, between lines 9 and 10).
- 6. Amend Senate provisions** excluding attorneys, with a technical correction, and employee benefit and compensation plans (Senate Bill § (Senate Bill § 1027(e), page 1459, line 22 through page 1460, line 10; §1027(g), page 1462, lines through page 1463, line 7).
- 7. Amend Senate offer** relating to Energy & Commerce Committee.
- 8. Add new provision** relating to compensation, benefits and protections of Consumer Financial Protection Bureau employees, including employees transferred from existing agencies.
- 9. Amend Senate counter offer** to provide that the Bureau will not have rulemaking, supervisory and enforcement authority over motor vehicle dealers, with technical modifications.
- 10. Amend Senate provision** to provide for enforcement by the Bureau over payday lenders, check cashers and remitters, with modification.

The Senate does not accept the following House Counter-Counteroffer, dated June 24, 2010 proposals:

- 1. Amend Senate provision** requiring additional Regulatory Flexibility Act analyses prior to proposed rulemakings of the Bureau (Senate Bill § 1099F, page 1721, line 3 through 1722, line 25).
- 2. Amend House provision** streamlining the authorities of the Federal Trade Commission in issuing regulations, administering and enforcing the Federal Trade Commission Act (House Bill § 4901, page 1197, line 19 through page 1200, line 24).

11. Amend Senate provision to authorize Bureau to bring enforcement activities against insured depository institutions and credit unions with assets of \$10 billion or less.

12. Amend Senate provision to provide for funding growth of the Bureau based on the growth in operating expenses at prudential regulators.

House Proposed Amendment to Title X

--Page 4 of the House Manager's amendment, line 12, strike "gift" and insert "special purpose card or".

--Page 5 of the House Manager's amendment, line 3, after "that" insert ", except in the case of a card or product used solely for telephone services,".

--Page 31 of the House Manager's Amendment, line 22, after the sentence ending "in paragraph (1)(C)." add the following sentence:

"An election of coverage by the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan shall begin on the day following the end of the 18-month period beginning on the designated transfer date, and benefit accruals under the transferred employee's existing retirement plan shall end on the last day of the 18-month period beginning on the designated transfer date."

--Page 32 of the House Manager's Amendment, on line 4, after "Retirement Plan" add "on the day following the end of the 18-month period beginning on the designated transfer date."

--Page 33 of the House Manager's Amendment, strike line 22- 24 ("or the federal thrift plan as established under chapter 83 or chapter 84 of title 5, United States Code").

--Page 1385 of base text, after line 4, add a new section 1012(c)(5) to read as follows:

"Clarification of Bureau's autonomy in legal proceedings.--The Bureau shall not be liable under any provision of law for any action or inaction of the Board of Governors and the Board of Governors shall not be liable under any provision of law for any action or inaction of the Bureau."

--Page 1386 of base text, line 16, strike, "Notwithstanding any other provision of law, all such employees shall be appointed on terms and conditions that are consistent with the terms and conditions set forth in section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l))." and replace with the following:

(C) In making any appointment under subparagraph (A), the Director may waive the requirements of chapter 33 of title 5, United States Code, and the regulations implementing such chapter, to the extent necessary to appoint employees on terms and conditions that are consistent with those set forth in section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l)), while providing for the following:

(i) Fair, credible, and transparent methods of establishing qualification requirements for, recruitment for, and appointments to positions.

(ii) Fair and open competition and equitable treatment in the consideration and selection of individuals to positions.

(iii) Fair, credible, and transparent methods of assigning, reassigning, detailing, transferring, or promoting employees.

In implementing this paragraph, the Director shall comply with the provisions of section 2302(b)(11), regarding veterans' preference requirements, in a manner consistent with

that in which such provisions are applied under chapter 33. The authority under this subparagraph to waive the requirements of chapter 33 shall expire 5 years after the date of the enactment of Restoring American Financial Stability Act of 2010.

--Page 1398 of base text, line 1, insert "and the Committee on Energy and Commerce after "Services"

--Page 1398 of base text, line 8, insert "and the Committee on Energy and Commerce" after "Services"

--Page 1398 of base text, line 10, to read: "The Bureau may also submit such report to the Senate Committee on Commerce, Science and Transportation."

--Page 1401, strike line 1 and all that follow through line 8, and insert the following new subparagraphs:

"(B) Adjustment of Amount.—The dollar amount referred to in subparagraph (A)(iii) shall be adjusted annually, using the average of the percent increase, if any, by which the operating expenses of each comparative financial regulatory agency, as reported in their annual financial statements, differ from the operating expenses of that agency from the prior year.

(C) Definition.—For the purposes of this section the term "comparative financial regulatory agency" means—

- (i) the Board of Governors;
- (ii) the Commission,
- (iii) the Federal Deposit Insurance Corporation; and
- (iv) the Comptroller of the Currency.

(D) Reviewability.—Notwithstanding any other provision in this title, the funds derived from the Federal System pursuant to this subsection shall not be subject to review by the Committees on Appropriations of the House of representatives and the Senate."

~~Page 1425, line 23, strike "or".~~

insert

~~Page 1431, line 14 before the ",", add "or any other person that offers or provides to a consumer any payday loan, payment instrument, foreign exchange service, or any service for transmitting monetary value, or check cashing services"~~

--Page 1446, line 19, before the comma insert "and as provided in paragraph (3)".

--Page 1447, between lines 12 and 13, insert the following:

"(3) COMPLAINTS.—When, based on complaints concerning consumer financial products or services administered by the Bureau under section 1013(b)(3), the Bureau has reason to believe that a person described in subsection (a) has engaged in a material violation of a Federal consumer financial law, or that there is sufficient information about a potential material violation to warrant further examination or investigation, the Bureau may directly investigate for noncompliance and take any action permitted under subtitle E as if the person described in subparagraph (A) were a person described in section

~~1025(a). The Bureau shall notify the prudential regulator in writing prior to commencing an investigation, and the prudential regulator may have its examiners participate in any investigation as if they were investigators of the Bureau pursuant to subsection (c)."~~

--Page 1459 of base text, strike line 22 and all that follows through page 1460, line 10, and insert the following new subsection:

(e) EXCLUSION FOR PRACTICE OF LAW.—

(1) IN GENERAL.—Except as provided under paragraph (2), the Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law.

(2) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—Paragraph (1) shall not be construed so as to limit the exercise by the Bureau of any supervisory, enforcement, or other authority, regarding the offering or provision of a consumer financial product or service described in any subparagraph of section 1002(5) that is not offered or provided as part of, or incidental to, the practice of law, occurring exclusively within the scope of the attorney-client relationship, or that is otherwise offered or provided by the attorney in question with respect to any consumer who is not receiving legal advice or services from the attorney in connection with such financial product or service. (i)

(B) EXISTING AUTHORITY.—Paragraph (1) shall not be construed so as to limit the authority of the Bureau with respect to any attorney to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H." (ii)

--Page 1462 of base text, line 15, strike "(B)" and all that follows through "request" on line 22, and insert:

"(B) BUREAU ACTION PURSUANT TO AGENCY REQUEST OR RESPONSE.—

"(i) AGENCY REQUEST.—The Secretary and the Secretary of Labor may jointly issue a written request to the Bureau regarding implementation of appropriate consumer protection standards under this title with respect to the provision of services relating to any specified plan or arrangement.

"(ii) AGENCY RESPONSE.—In response to a request by the Bureau, the Secretary and the Secretary of Labor shall jointly issue a written response within 90 days to grant or deny the request of the Bureau regarding implementation of appropriate consumer protection standards under this title with respect to the provision of services relating to any specified plan or arrangement.

"(iii) SCOPE OF BUREAU ACTION.—Subject to a request or response by the agencies".

--Page 1462 of base text, line 25, after "request" insert "or response".

--Page 1463 of base text, line 2, after "request" insert "or response".

--Page 1496 of base text, strike lines 14 through 24 and replace with the following:

“(B) In accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the national bank's exercise of its powers; and any preemption determination under this subparagraph may be made by a court, or by regulation or order of the Comptroller of the Currency on a case-by-case basis, in accordance with applicable law; or”

--Page 1571 of base text, on lines 14 and 15, delete the words “on the day before the designated transfer date.”

~~--Page 1598 of base text, after lien 10, insert the following new section (and redesignate subsequent section accordingly:~~

(a) Section 5(m)(1)(A) of the Federal Trade Commission Act (15 U.S.C. 45(m)(1)(A)) is amended--

- (1) by inserting ‘this Act or’ after ‘violates’ the first place such term appears;
- (2) by inserting a comma after ‘under this Act’;
- (3) by inserting a comma after ‘subsection (a)(1)’; and
- (4) by inserting ‘a violation of this Act or is’ before ‘prohibited’.

(b) Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding at the end thereof the following new subsection:

‘(o) Unlawful Assistance- It is unlawful for any person, partnership, or corporation, knowingly or recklessly, to provide substantial assistance to another in violating any provision of this Act or of any other Act enforceable by the Commission that relates to unfair or deceptive acts or practices. Any such violation shall constitute an unfair or deceptive act or practice described in section 5(a)(1) of this Act, except that no person, partnership or corporation shall be held to have violated this subsection solely by virtue of providing or selling time or space to another for placing an advertisement through print or electronic media. Nothing in this section shall be construed as limiting or superseding the protection provided to any provider or user qualifying for protection under section 230(c)(1) of the Communications Act of 1934 (47 U.S.C. 230(c)(1)).’

(c) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) is amended--

- (1) in subsection (a)(1), by striking ‘(h)’ and inserting ‘(g)’;
- (2) by amending subsection (b) to read as follows:

‘(b) Procedure Applicable- When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of title 5.’;
- (3) by striking subsection (c);
- (4) in subsection (d), by striking ‘(d)(1) The Commission’s’ and all that follows through the end of paragraph (2) and by redesignating paragraph (3) of such subsection as subsection (c);

(5) In such subsection (c) (as so redesignated), by inserting 'prescribed' after 'any rule';

(6) by striking subsections (i) and (j) and redesignating subsections (e), (g), and (h) as subsections (d), (f), and (g), respectively;

(7) in subsection (c) (as redesignated), by inserting 'prescribed' after 'rule'; and

(8) in subsection (d) (as redesignated)--

(A) in paragraph (1)(A) by striking 'promulgated' and inserting 'prescribed';

(B) in paragraph (1)(B), by striking 'the transcript required by subsection (c)(5),';

(C) in paragraph (3), by striking 'The court shall hold unlawful' and all that follows through the end of the paragraph; and

(D) by striking paragraphs (4) and (5) and inserting the following:

'(4) The procedure set forth in this subsection for judicial review of a rule prescribed under subsection (a)(1)(B) is the exclusive means for such review, other than in an enforcement proceeding.';
and

(9) in subsection (f)(2) (as so redesignated), by striking 'class or persons' and inserting 'class of persons'.

(d) Section 16(a) of the Federal Trade Commission Act (15 U.S.C. 56(a)) is amended--

(1) in paragraph (1) by striking "or (3)" and inserting ", (3), or (4)";

(2) by inserting a new paragraph (3) as follows --

"(3) In the case of an action under Section 53 of this title relating to injunctive relief respecting unfair or deceptive acts or practices, the Commission may, in its own name by any of its attorneys designated by it for such purpose, add a claim under section 45(m)(1) (relating to unfair or deceptive acts or practices), to collect civil penalties if:

"(A) The commission has given notice to the Attorney General as provided in Section (a)(1) and

"(B) The Attorney General fails within 45 days after receipt of such notification to commence or intervene in an action to collect such civil penalties." and;

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively.

(e) Section 5(l) of the Federal Trade Commission Act (15 U.S.C. 45(l)) is amended in the first sentence by inserting 'the Commission or' after 'brought by'.

(f) Nothing in this section shall be construed to modify or affect the Commission's authority with respect to unfair methods of competition.

transfer and any other

--Page 1611, beginning on line 7, strike "describing the amount" and all that follows through line 10 and insert:

- (i) the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged;
- (ii) the ~~total~~ amount of fees charged by the remittance transfer provider for the remittance transfer;
- (iii) any exchange rate to be used by the remittance transfer provider for the remittance transfer to the nearest 1/100th of a point; and".

--Page 1611 of base text, line 21, after "recipient" insert: ", if either the telephone number or the address of the designated recipient is provided by the sender".

--Page 1618 of base text, line 5, after "allow" insert ", or the method by which transactions are made in the recipient country do not allow,".

--Page 1693 of base text, on line 11, after "subsection (b)", add a new sentence that reads as follows:

To facilitate research, examinations, and enforcement, all data collected pursuant to section 304 (12 U.S.C. 2803) shall be available to the entities listed under subsection (b).

~~--Page 1721, line 11, strike "System;" and insert "System when exercising any authority under Subtitle C of the Consumer Financial Protection Act of 2010;"~~

--Page 1722, after line 25, insert the following:

"(d) Time Limit.--Section 609 of title 5, United States Code, is amended by inserting at the end:

"(f) RULEMAKING PROCESS. Notwithstanding any other provision of this Act, the Bureau of Consumer Financial Protection may proceed with the rulemaking process if the deadline provided in subsection (b)(5) is not satisfied. In such case, the Bureau of Consumer Financial Protection shall consider the panel report, if any, when it issues the final rule."

insert

~~--From Senate Counter Offer "Insert" regarding Auto dealer-lender referencing Page 1471, after line 4, -- on page 1 of the Insert strike the following:~~

"(2) Description of Activities. -- Notwithstanding paragraph (1), The Bureau may exercise rulemaking authority with respect to a person described in paragraph (1) when such person is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(3) Truth in Lending Act.—Paragraph (2) shall not apply with respect to the authority to prescribe rules under the Truth in Lending Act (15 U.S.C. 1601 et seq.)."

--From Senate Counter Offer "Insert" regarding Auto dealer-lender referencing Page 1471, after line 4, -- on page 1 of the Insert, insert the following:

"(2) Savings Clause. — Notwithstanding this subtitle or any other provision of law, the consumer financial functions of the Board of Governors, the Federal Trade Commission, and any other Federal agency shall not be transferred to the Director to the extent the functions are with respect to persons described in (a)(1)."

--From Senate Counter Offer "Insert" regarding Auto dealer-lender referencing Page 1471, after line 4, -- on page 2 of the Insert strike paragraph (c)(2).

--From Senate Counter Offer "Insert" regarding Auto dealer-lender referencing Page 1471, after line 4, -- on page 4 of the Insert strike beginning line "Page 1710, beginning" through the end of the Insert.

Accordingly, the revisions should be revised as follows:

SEC. 1029. EXCLUSION FOR AUTO DEALERS.

(a) SALE, SERVICING, AND LEASING OF MOTOR VEHICLES EXCLUDED.—

(1) IN GENERAL.—Except as permitted in subsection (b), the Director and the Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority, including authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(2) Savings Clause. — Notwithstanding this subtitle or any other provision of law, the consumer financial functions of the Board of Governors, the Federal Trade Commission, and any other Federal agency shall not be transferred to the Director to the extent the functions are with respect to persons described in (a)(1).

(b) CERTAIN FUNCTIONS EXCEPTED.—The provisions of subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property;

(2) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

(A) the extension of retail credit or retail leases are provided directly to consumers; and

(B) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or

(3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

(c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in this section shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(d) FEDERAL TRADE COMMISSION AUTHORITY.—Notwithstanding section 18 of the Federal Trade Commission Act, the Federal Trade Commission is authorized to prescribe rules under sections 5 and 18(a)(1)(B) of the Federal Trade Commission Act in accordance with section 553 of title 5, United States Code, with respect to a person described under paragraph (1)(A).

(e) Coordination with Office of Service Member Affairs.—The Board of Governors and the Federal Trade Commission shall coordinate with the Office of Service Member Affairs, to ensure that—

(1) service members and their families are educated and empowered to make better informed decisions regarding consumer financial products and services offered by motor vehicle dealers, with a focus on motor vehicle dealers in the proximity of military installations; and

(2) complaints by service members and their families concerning such motor vehicle dealers are effectively monitored and responded to, and where appropriate, enforcement action is pursued by the authorized agencies.

(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) MOTOR VEHICLE.—The term “motor vehicle” means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) MOTOR VEHICLE DEALER.—The term “motor vehicle dealer” means any person or resident in the United States, or any territory of the United States, who—

(A) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles; and

(B) takes title to, holds an ownership in, or takes physical custody of motor vehicles.

Page 1468, line 16, strike “and (I)” and insert “, (I), and section 1029.

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On page 61 of the Senate counteroffer [Registration of all nonbanks insert], in paragraph (6)(B), strike "shall" and insert "may".

On page 62 of the Senate counteroffer [Registration of private student loans insert], line 3, strike "; or" and insert ",".

On page 62 of the Senate counteroffer [Registration of private student loans insert], line 6, strike "1027(a)(2)(C)."" and insert the following:

"1027(a)(2)(C); or

"(E) offers or provides to a consumer a payday loan."

Page 1426, line 5 insert "that such covered person" before "is"

Page 1426, line 5 strike "a pattern of"

Page 1426, line 6 strike "undue"

Exclusion for Auto Dealer-Lenders

—From Senate Counter Offer “Insert” regarding Auto dealer-lender referencing Page 1471, after line 4,—strike the Insert in its entirety and insert the following:

“Page 1471, after line 4, insert the following new section (and redesignate the subsequent section accordingly):

“SEC. 1029. EXCLUSION FOR AUTO DEALERS.

“(a) SALE, SERVICING, AND LEASING OF MOTOR VEHICLES EXCLUDED.—Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority, including authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

“(b) CERTAIN FUNCTIONS EXCEPTED.—Subsection (a) shall not apply to any person, to the extent that such person—

“(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property;

“(2) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

“(A) the extension of retail credit or retail leases are provided directly to consumers; and

“(B) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or

“(3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other

servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

“(c) PRESERVATION OF AUTHORITIES OF OTHER AGENCIES.—Except as provided in subsections (b) and (d), nothing in this title, including subtitle F, shall be construed as modifying, limiting, or superseding the operation of any provision of Federal law, or otherwise affecting the authority of the Board of Governors, the Federal Trade Commission, or any other Federal agency, with respect to a person described in subsection (a).

“(d) FEDERAL TRADE COMMISSION AUTHORITY.—Notwithstanding section 18 of the Federal Trade Commission Act, the Federal Trade Commission is authorized to prescribe rules under sections 5 and 18(a)(1)(B) of the Federal Trade Commission Act in accordance with section 553 of title 5, United States Code, with respect to a person described in subsection (a).

“(e) COORDINATION WITH OFFICE OF SERVICE MEMBER AFFAIRS.—The Board of Governors and the Federal Trade Commission shall coordinate with the Office of Service Member Affairs, to ensure that—

“(1) service members and their families are educated and empowered to make better informed decisions regarding consumer financial products and services offered by motor vehicle dealers, with a focus on motor vehicle dealers in the proximity of military installations; and

“(2) complaints by service members and their families concerning such motor vehicle dealers are effectively monitored and responded to, and where appropriate, enforcement action is pursued by the authorized agencies.

“(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) MOTOR VEHICLE.—The term “motor vehicle” means—

“(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

“(B) recreational boats and marine equipment;

“(C) motorcycles;

“(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

“(E) other vehicles that are titled and sold through dealers.

“(2) MOTOR VEHICLE DEALER.—The term “motor vehicle dealer” means any person or resident in the United States, or any territory of the United States, who—

“(A) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles; and

“(B) takes title to, holds an ownership in, or takes physical custody of motor vehicles.”.”

Page 1468, line 16, strike “and (l)” and insert “, (l), and section 1029.”